

Fair Political Practices Commission
MEMORANDUM

TO: Chairman Getman, Commissioners Downey, Knox, Scott and Swanson

FROM: C. Scott Tocher, Counsel, Legal Division
Luisa Menchaca, General Counsel

DATE: December 18, 2001

SUBJECT: Implementation of Proposition 34; Repeal of Emergency Regulation 18543; Adoption of Regulation 18543 Concerning Lifting of Voluntary Expenditure Limits

=====

On November 7, 2000, the voters approved Proposition 34, which significantly amended the Political Reform Act ("Act"). Among other things, Proposition 34 established a voluntary expenditure limit system for candidates for elective state office. Pursuant to this scheme, candidates may elect to abide by predetermined limits on campaign expenditures for a given election. Government Code¹ section 85402 provides, however, that candidates who declare their intent to abide by those limits are relieved of that obligation if another candidate contributes personal funds to his or her own campaign in excess of the applicable limits for that office.

At its October meeting, the Commission adopted Emergency Regulation 18543² to address two issues that arose with respect to this new law. The issues were framed as follows: First, if a candidate in a *primary* election contributes personal funds in excess of the expenditure limits, and thereby triggers the release of other candidates to exceed the limits, even if they already have indicated their commitment to abide by them, are *all* candidates relieved from that commitment, or only those who are candidates for the same party's nomination as the candidate who contributed personal funds? Second, if personal funds are contributed in the primary election as described above, what is the impact of that contribution on the expenditure limits in the *general* election?

The Commission decided these issues as described below. **Commission staff recommends the Commission repeal the existing emergency regulation and permanently adopt an identical regulation.**

¹ All statutory references are to the Government Code.

² Emergency regulation 18453 expires by operation of law on February 27, 2002.

Lifting Expenditure Limits

Article 4 of Chapter 5 of the Act establishes voluntary expenditure limits for elective state office. (§ 85400.) For instance, Assembly candidates who declare their intention to abide by the limits may not make campaign expenditures in excess of \$400,000 in the primary or special primary election and \$700,000 in the general, or special runoff election. (§ 85400, subd. (a)(1).) Because the federal constitution protects a candidate's use of personal funds, section 85402 seeks to level the playing field for candidates who have agreed to abide by the expenditure limits yet face an opponent who contributes personal funds that exceed the expenditure limits for an election. Section 85402 provides:

"85402. Lifting Expenditure Limits; Opponent's Use of Personal Funds.

"(a) Any candidate for elective state office who has filed a statement accepting the voluntary expenditure limits is not bound by those limits if an opposing candidate contributes personal funds to his or her own campaign in excess of the limits set forth in Section 85400.

"(b) The commission shall require by regulation timely notification by candidates for elective state office who make personal contributions to their own campaign."

In Regulation 18542, the Commission instructs candidates to notify the Secretary of State within 24 hours of making personal contributions to his or her campaign in excess of the limits set forth in section 85400.

Neither the Act nor section 85402 defines "opposing candidate." Nor does section 85402 address the interaction of section 85402 between conduct in a primary election and any consequences for the general election. While one can safely say that a candidate in a *general* election who contributes personal funds in excess of the limits relieves all opposing candidates (regardless of party affiliation) from abiding by the limits in that same general election, **it is not so clear with respect to conduct in a *primary* election and its impact on the ensuing general election.**

At the October meeting, the Commission considered whether the contribution of personal funds by a candidate for one party's nomination in a primary election lifts the limits for *all* candidates, or only those competing for the same party's nomination. As to this first issue, **the Commission determined that the contribution limits are lifted for all candidates, regardless of party affiliation.**

Background:

In its deliberations, the Commission considered the term "opposing candidate," as used in subdivision (a) of section 85402, which, as stated above, is not defined. In a

general election, this term poses no problem of interpretation – any two or more candidates for the same office are "opposing" candidates. A primary or special primary election, however, is actually an election to determine a given party's nominee for the general or special general election. Thus, one's "opponent" in a primary election, arguably, is anyone competing for the same party's nomination. If there is only one candidate for a party's nomination in a primary election, it is usually said that the candidate is running unopposed.

On the other hand, for purposes of the candidate's declaration of acceptance or rejection of expenditure ceilings, section 85401, a candidate must indicate so when the candidate files a statement of intention. If the candidate accepts the limits, he or she may not later amend the statement of intention to reject them.³ A candidate does not file another statement declaring intent for the general election. In this manner, the two elections are treated as one for purposes of declaring an intent regarding the expenditure limits. The choice, however, is effective for both elections. Therefore, the Commission concluded the limits are lifted for all candidates.

The second issue the Commission considered was whether the lifting of expenditure limits in the primary election also lift the expenditure limits in the general election?

Section 85402 establishes the rule that expenditure limits are lifted when an opposing candidate contributes personal funds in excess of those amounts. The statute does not indicate, however, whether lifting the limits in a primary election will have a corresponding effect on the limits in the general election. The question of "opponent" discussed above, however, falls away, for every candidate in a general election is an "opponent." The Commission considered whether a primary candidate's contribution of personal funds will: 1) have no effect on the general election limits, 2) affect the general election only if the contributing candidate in the primary advances to the general election, or 3) result in the lifting of the expenditure limits in the general election regardless of whether the contributing candidate advances.⁴

The Commission determined at its October meeting that a primary candidate's contribution of personal funds will result in the lifting of the expenditure limits in the general election regardless of whether the contributing candidate advances.

Staff Recommendation: Staff recommends the Commission adopt regulation 18543 permanently.

³ Subdivision (b) of section 85401, however, allows a candidate who has rejected the limits in the primary election to file a statement of acceptance of the limits for the general election *if* the candidate did not exceed the expenditure limits in the primary election. (§ 85401, subd.(b).)

⁴ It should be noted that the general election expenditure limits themselves are subject to the provisions of section 85402, such that, regardless of the regulation, the limits may nevertheless be lifted in the general election if a candidate in the general election contributes personal funds in excess of the applicable expenditure limits.